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attack, he is justified in resorting to defensive action. It is the outward demonstration that constitutes the mischief which is punished as a breach of peace." The reasons that an assault is punished criminally are first, that the act itself is a breach of the peace, and, second, that it tends to provoke a further breach by obliging the person assaulted to resort to defensive measures. The concealed ability or inability to do the injury is immaterial. The breach is just as serious and patent where the gun is unloaded as it is where it is loaded. The act of the assaulting party is not affected in outward appearance, nor is the likelihood of the assaulted party's defending lessened, because the gun is in fact a harmless weapon.

The distinction suggested in *Chapman v. State*,⁸ that an attack with an unloaded gun will sustain a civil action for assault, but not a criminal action has not been observed by other courts.

G. A. W.

Criminal Law: Checks Post Dated with Intent to Defraud.—The idea seems to have been very generally entertained until recently that one could not be convicted under Sec. 476a of the Penal Code of California for passing a fraudulent check which was post dated. This prevailing opinion was based on the theory that such an instrument was not a "check" within the meaning of the statute.¹ But the point has now been conclusively settled by the Supreme Court on a rehearing of that case that the passing of such a check is within the section.² The court holds that even if it were conceded, (which was not), that the post dated instrument was not a "check" within the meaning of the statute, still it was clearly a "draft," the passing of which with fraudulent intent is likewise punishable. The check in the *Bercovitz* case was passed on the 4th of February and dated the 6th, and the evidence tended to prove that the payee did not notice the fact that the check was postdated. Suppose that he had been informed of this fact and had assented, could the defendant still have been held? It would undoubtedly be much more difficult to prove the fraudulent intent under these circumstances, but if it could have been proved there seems no reason why a conviction should not be sustained.

This suggests the question, what are the necessary elements for conviction under Sec. 476a of the Penal Code? They seem to be four in number. 1, Drawing of a draft or check on a bank, banker, or depositary; 2, Want of funds in or credit with the bank to satisfy such draft or check; 3, Knowledge by the defendant of want of funds or credit; 4, Intent to defraud.

In connection with the first element in the offense, it has been objected that the statute is unconstitutional, in that the requirement that

⁸ 78 Ala. 663 (1885).

¹ *People v. Bercovitz*, 13 Cal. App. Dec. 715 (1912).

² 126 Pac 479 (Sept. 6, 1912).

the check be drawn on a bank, banker, or depository for the payment of money makes it special or class legislation. However, this objection is without merit for the reason that the word "banker" is not a personal description, but is uniform as to all institutions on which checks are generally drawn. A violator cannot object because checks drawn on individuals other than bankers do not come under this requirement.³

As in the second element, there must be actual and positive proof of such absence of funds. The fact that the check in question was returned with "no account" written across its face is of course merely hearsay evidence of the absence of funds.⁴

In showing the last two elements of the offense, knowledge and intent to defraud, proof of the passing of other checks by defendant may be admitted as evidence, either of his knowledge of the state of his account or of his fraudulent intent.⁵

B. S. C.

Duty of Parent to Support Adult Child.—The San Francisco daily papers of September 21, 1912, noted the payment by Blitz Paxton, of \$5000, the income of which is to be paid to his blind adult son, pursuant to the decision in *Paxton v. Paxton*.¹

The case is of peculiar interest, resting upon a code section changing radically the common law and extending the statutory liability of parents for the support of an adult child beyond the limits prescribed by most of the States of the Union. By Section 206 of the Civil Code of California, "it is the duty of the father, mother, children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of his ability."

In general, it is the duty of parents to support and maintain their minor children and although there has been some difference of opinion as to whether in the absence of statute, this is a legal or merely a moral obligation, the better view is that it is a legal one. At the present time, the legal duty is very generally imposed by statute. In the absence of statute, however, a parent is under no legal obligation to support an adult child.² The first statute to be passed providing for obligatory maintenance of children by parents, was passed in the reign of Elizabeth (43 Eliz., c. 2, sec. 6), and rather singularly, applied not only to minors but to indigent adults as well.

The Paxton case follows the only other California case involving this aspect of the code section. In *Anderson v. Anderson*,³ the court held

³ *People v. Russell*, 156 Cal. 450; 105 Pac. 416 (1909).

⁴ *People v. Frey*, 15 Cal. App. Dec. 177 (1912).

⁵ *People v. Bercovitz*, *supra*.²

¹ 150 Cal. 667; 89 Pac. 1083 (1907).

² *Mills v. Wyman*, 3 Pickering 207 (1825).

³ 124 Cal. 48; 56 Pac. 630; 57 Pac. 881 (1899).